

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERTO DURAND,

Plaintiff,

v.

MAURO,

Defendant.

Case No. 3:22-cv-00210-RCJ-CSD

ORDER

I. DISCUSSION

On May 9, 2022, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1). Plaintiff filed a second application to proceed *in forma pauperis* the next day. (ECF No. 2). Plaintiff's applications to proceed *in forma pauperis* are incomplete. Plaintiff has not submitted an inmate account statement for the previous six-month period with either application.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to commence a civil action may apply to proceed *in forma pauperis*, which allows the inmate to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three of the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, on this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period.**

In the event Plaintiff is having difficulty obtaining the required inmate account statement for the previous six-month period from prison officials, Plaintiff shall file a

1 declaration detailing when he requested the documents, who he spoke to about the status
2 of the documents, who he followed up with after he did not receive the documents, and
3 their responses. Plaintiff's declaration shall include dates of his requests, dates of his
4 follow-up requests, names of the prison officials that he spoke to about the matter, and their
5 responses. If Plaintiff's declaration demonstrates that he has done all that was possible to
6 acquire the documents from prison officials, the Court will consider his application to
7 proceed *in forma pauperis* complete.¹

8 Accordingly, the Court denies Plaintiff's applications to proceed *in forma pauperis*
9 (ECF Nos. 1, 2) without prejudice because they are incomplete. The Court will grant
10 Plaintiff a **one-time extension** until on or before **August 8, 2022**, to file a fully complete
11 application to proceed *in forma pauperis* containing all three of the required documents or,
12 alternatively, the first three pages of the application to proceed *in forma pauperis* and a
13 declaration detailing the efforts he took to acquire the inmate account statement from prison
14 officials. Absent unusual circumstances, the Court will not grant any further extensions of
15 time. If Plaintiff does not comply with this Order on or before **August 8, 2022**, the Court will
16 recommend dismissal of this case without prejudice for Plaintiff to file a new case with the
17 Court when Plaintiff is able to acquire all three of the documents needed to file a fully
18 complete application to proceed *in forma pauperis* or, alternatively, the first three pages of
19 the application to proceed *in forma pauperis* and a declaration detailing the efforts he took
20 to acquire the inmate account statement from prison officials.

21 A dismissal without prejudice means Plaintiff does not give up the right to refile the
22 case with the Court, under a new case number, when Plaintiff has all three documents
23 needed to submit with the application to proceed *in forma pauperis* or, alternatively, the first
24 three pages of the application to proceed *in forma pauperis* and a declaration detailing the

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26 ¹ Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis*
27 on this Court's approved form with his declaration. If Plaintiff does not submit the first three
28 pages of the application to proceed *in forma pauperis* with the declaration, the Court will
recommend dismissal of this case without prejudice for Plaintiff to open a new case when he
is able to acquire the required documents.

1 efforts he took to acquire the inmate account statement from prison officials. Plaintiff may
 2 choose not to file an application to proceed *in forma pauperis* and instead pay the full filing
 3 fee of \$402 on or before **August 8, 2022**, to proceed with this case.

4 The Court will retain Plaintiff's civil rights Complaint (ECF No. 1-1), but the Court will
 5 not file the Complaint unless and until Plaintiff timely files a fully complete application to
 6 proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages
 7 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he
 8 took to acquire the inmate account statement from prison officials, or pays the full \$402
 9 filing fee.

10 **II. CONCLUSION**

11 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's applications to
 12 proceed *in forma pauperis* (ECF Nos. 1, 2) are denied without prejudice to file a new fully
 13 complete application to proceed *in forma pauperis* with all three documents.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff the
 15 approved form application to proceed *in forma pauperis* by an inmate, as well as the
 16 document entitled information and instructions for filing an *in forma pauperis* application.

17 IT IS FURTHER ORDERED that on or before **August 8, 2022**, Plaintiff shall either
 18 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
 19 administrative fee) or file with the Court:

20 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
 21 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
 22 signatures on page 3),

23 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
 24 official (i.e. page 4 of this Court's approved form), and

25 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
 26 **previous six-month period.**

27 IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his inmate account
 28 statement from prison officials, Plaintiff shall file the first three pages of the application to

1 proceed *in forma pauperis* together with a declaration detailing the efforts he took to acquire
2 the financial certificate and inmate account statement from prison officials.

3 IT IS FURTHER ORDERED that if Plaintiff does not file a fully complete application
4 to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages
5 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he
6 took to acquire the financial certificate and inmate account statement from prison officials,
7 or pay the full \$402 filing fee for a civil action on or before **August 8, 2022**, the Court will
8 recommend dismissal of this action without prejudice for Plaintiff to refile the case with the
9 Court, under a new case number, when Plaintiff has all three documents needed to file a
10 complete application to proceed *in forma pauperis*.

11 IT IS FURTHER ORDERED that the Clerk of the Court shall retain Plaintiff's civil
12 rights Complaint (ECF No.1-1) but will not file it at this time.

13 DATED: June 7, 2022.

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16 UNITED STATES MAGISTRATE JUDGE
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